

HOUSE BILL NO. 738

INTRODUCED BY KAUFMANN

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CREATE AN ADVISORY COMMISSION ON PROVIDER RATES AND SERVICES; PROVIDING LEGISLATIVE FINDINGS, PURPOSE, AND INTENT; PROVIDING DEFINITIONS; PROVIDING FOR THE DUTIES, MEMBERSHIP, AND ADMINISTRATION OF THE COMMISSION; REQUIRING THE COMMISSION TO REVIEW AND MAKE RECOMMENDATIONS CONCERNING SERVICES PROVIDED BY CONTRACT TO CHILDREN AND ADULTS IN A COMMUNITY SETTING BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, THE COSTS OF THOSE SERVICES, AND REIMBURSEMENT RATES PAID TO THE CONTRACT PROVIDERS OF THOSE SERVICES; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ASSIST THE COMMISSION; PROVIDING FOR THE PRIVACY OF CERTAIN CONTRACT INFORMATION; AND REQUIRING THE COMMISSION TO MAKE FINDINGS, RECOMMENDATIONS, AND REPORTS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Legislative findings, purpose, and intent. (1) The legislature finds that services provided by the department to persons who are living in a community setting outside of state institutions and who are persons with developmental disabilities, are mentally ill, or are elderly or very young are essential services, and the essential nature of the services is not diminished because the services are provided by contracts. Because the services provided by contracts are many and are important to the well-being of Montana residents who can least care for themselves, the legislature finds that it is necessary to establish a system under which provider services, the costs of providers, and the reimbursement rates paid to providers are monitored on a regular basis to ensure that state funding is appropriately expended, that consumers' and taxpayers' expectations are attended to, and that the providers of the services are treated fairly.

(2) The purpose of [sections 1 through 6] is to provide a regular, predictable, and equitable mechanism under which contracted services, costs, and reimbursement rates are given optimum attention by the department. The legislature does, however, retain its constitutional duty to enact or amend law concerning contracted services, make appropriations for contracted services through funding of department programs, and

1 review department contracted service programs through the mechanism provided in [sections 1 through 6].
2 [Sections 1 through 6] are not intended to restrict the legislature in making its appropriate policy and fiscal
3 judgments concerning the value of department programs or services.

4 (3) It is the intent of the legislature that to the greatest extent practicable, the commission should:

5 (a) establish an open; AND defensible process ~~that is free from personalities, political parties, and the~~
6 ~~legislative process~~ FOR CONDUCTING ITS WORK;

7 (b) create a set methodology or protocol through which provider reimbursement rates can be
8 recommended for a service, service level, or population of service consumers served by a provider and the
9 department;

10 (c) recommend a list of reimbursable expenses for every service and service level based upon the
11 expenses necessary to provide that service or service level and comply with the licensure, contracts, and
12 administrative rules that govern that service or service level; ~~and~~

13 (d) recommend rate equity among service levels within a group of services and between different groups
14 of services; AND

15 (E) RECOMMEND THE BEST AND MOST COST-EFFECTIVE METHOD OF REGULATING AND AUDITING PROVIDER
16 SERVICES.

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18 NEW SECTION. Section 2. Definitions. As used in [sections 1 through 6], the following definitions
19 apply:

20 (1) "Commission" means the commission on provider rates and services established in [section 3].

21 (2) "Department" means the department of public health and human services established in 2-15-2201.

22 (3) "Director" means the director of the department.

23 (4) "Provider" means an entity that contracts with the department to offer services to others.

24 (5) "Services" means those services paid for by the department for:

25 (a) a child pursuant to Title 41, Title 42, chapter 3, or Title 52, chapter 2; or

26 (b) a child or an adult in a community or long-term care setting and not in a state institution, pursuant
27 to Title 53.

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29 NEW SECTION. Section 3. Commission on provider rates and services. (1) The department shall
30 form an advisory commission to be known as the commission on provider rates and services, to provide

information to the department concerning provider services, costs, and reimbursement rates. The commission membership must include a maximum of 15 individuals representing providers, consumers of provider services, and family members of consumers and ~~must include a representative of the office of the legislative fiscal analyst and the governor's office on budget and program planning, legislators, and employees of the department.~~ IS AS FOLLOWS:

(A) AT LEAST THREE PROVIDERS;

(B) AT LEAST THREE OF A COMBINATION OF CONSUMERS OF PROVIDER SERVICES AND FAMILY MEMBERS OF CONSUMERS;

(C) TWO EMPLOYEES OF THE DEPARTMENT;

(D) ONE REPRESENTATIVE FROM THE LEGISLATIVE FISCAL DIVISION;

(E) ONE REPRESENTATIVE FROM THE GOVERNOR'S OFFICE ON BUDGET AND PROGRAM PLANNING;

(F) ONE MEMBER OF EACH OF THE TWO MAJOR POLITICAL PARTIES OF THE HOUSE OF REPRESENTATIVES; AND

(G) ONE MEMBER OF EACH OF THE TWO MAJOR POLITICAL PARTIES OF THE SENATE.

(2) Except as provided in this section, the commission is subject to the provisions of 2-15-122.

~~(2)~~(3) Except as provided in this section, members shall serve for a term of 2 years and may be reappointed by the appointing authority for one additional term. A member appointed to fill an unexpired term may be appointed for an additional two terms. The appointing authority shall stagger the first terms of the first board to terms of 2 to 4 years. Members appointed to represent state departments, offices, or other state bodies may be appointed and reappointed as the department determines necessary.

~~(3)~~(4) The commission shall elect a presiding officer and vice presiding officer and by vote determine its rules of operation. The commission shall meet at the call of the presiding officer, who shall determine meeting times in consultation with the department.

~~(4)~~(5) The commission is allocated to the department for administrative purposes only as provided in 2-15-121.

NEW SECTION. **Section 4. Duties of commission on provider rates and services.** (1) The commission shall conduct an ongoing review of provider services, costs, and reimbursement rates. The review must be made without regard to the source of funds for reimbursement payments.

(2) The commission shall consult with the director concerning provider services, costs, and reimbursement rates subject to its review but shall make independent determinations of those matters within

its authority. The commission shall establish the order in which provider services, costs, and reimbursement rates will be reviewed by the commission and the methodology that the commission will use in its review.

(3) The commission shall take into account the work of other advisory groups or councils working with the department on subjects concerning its authority and make recommendations to the director and appropriate members of those groups or councils concerning the subject and timing of the work of those groups or councils that will assist the commission and those groups or councils to exercise their legal or other authority and achieve their purpose.

(4) In conducting its review, the commission shall also consider:

(a) the need for the department to limit expenditures to appropriations;

(b) existing and future contracts with the department;

(c) state and federal laws, rules, and regulations; and

(d) the intention of the legislature to live within available revenue.

(5) IN REVIEWING EXISTING REIMBURSEMENT RATES AND RECOMMENDING NEW OR ALTERED REIMBURSEMENT RATES TO BE PAID TO PROVIDERS, THE COMMISSION SHALL CONSIDER THE FOLLOWING FACTORS:

(A) THE LEVEL OF FINANCIAL RISK TAKEN BY A PROVIDER IN PROVIDING SERVICES;

(B) THE COMPLEXITY OF THE PROVIDER'S SERVICES;

(C) THE CAPITAL INVESTMENT MADE BY THE PROVIDER;

(D) THE ADMINISTRATIVE OVERHEAD IN THE PROVIDER'S BUSINESS; AND

(E) ANY OTHER MATTER AFFECTING THE COST OF THE PROVIDER'S SERVICES.

NEW SECTION. Section 5. Department to assist and cooperate with commission on provider rates and services -- records privacy. The department shall provide to the commission the maximum assistance that may practicably be made available to the commission and shall provide the commission with the necessary equipment, records, and other material that are both necessary and helpful for the commission to achieve the purposes of [sections 1 thorough 6], including records and other material concerning past, current, and potential provider services, costs, and reimbursement. In providing and considering those records and materials, the department and the commission shall make whatever changes in provider or consumer information that are necessary to comply with lawful requirements for the privacy of the service providers and consumers.

NEW SECTION. Section 6. Commission findings, recommendations, and reports. The

commission shall:

(1) make recommendations and reports concerning its activities and the results of its review to the director at those times as the commission determines; and

(2) make findings and recommendations and prepare a report to the legislature, in the manner provided in 5-11-210, on the subjects of its review.

NEW SECTION. **Section 7. Codification instruction.** [Sections 1 through 6] are intended to be

codified as an integral part of Title 53, and the provisions of Title 53, apply to [sections 1 through 6].

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